

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HON. DUANE ALPHONSE HART,

Plaintiff,

v.

MEMORANDUM & ORDER
07-CV-5045 (NGG) (CLP)

RAOUL LIONEL FELDER,

Defendant.

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NICHOLAS G. GARAUFIS, U.S. District Judge.

On May 14, 2008, Magistrate Judge Cheryl L. Pollak issued a Report and Recommendation (“R&R”) recommending that this case be dismissed for lack of prosecution. (Docket Entry # 7.) Magistrate Judge Pollak noted that no action had been taken by either party in the case since December 6, 2007, the date on which this court issued a Memorandum and Order denying Plaintiff’s motion for preliminary injunction. (Id.; Docket Entry # 3.) Magistrate Judge Pollak also noted that she had issued two Orders dated March 7, 2008 and April 8, 2008 directing the parties to provide the court with a status report. (Id.) The April 8, 2008 Order specifically notified the parties that failure to respond to the Order within thirty days would result in a recommendation that the case be dismissed for lack of prosecution. (Docket Entry # 6.) Finally, the R&R stated that any objections to the R&R “must be filed with the clerk of court, with a copy to the undersigned, within ten (10) days of the receipt of this Report. Failure to file objections within the specified time waives the right to appeal the District Court’s Order.” (R&R at 1.)

In reviewing an R&R, this court “may accept, reject, or modify, in whole or in part, the

findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). In order to accept a magistrate judge’s R&R where, as here, no timely objection has been made, the “court need only satisfy itself that there is no clear error on the face of the record.” Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001); see also Pizarro v. Bartlett, 776 F. Supp. 815, 817 (S.D.N.Y. 1991) (a district court may accept an R&R if it is “not facially erroneous”). Having reviewed the R&R, the court is satisfied that there is no clear error on the face of the record given the parties failure to respond to Magistrate Judge Pollak’s orders that they pursue prosecution of the case. Therefore, this court adopts Magistrate Judge Pollak’s R&R and notes that, by their failure to object, the parties have waived further judicial review of this Order. See Mario v. P & C Food Mkts., Inc., 313 F.3d 758, 766 (2d Cir. 2002) (“failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision”).

The clerk of court is directed to close the case.

SO ORDERED.

Dated: June 4, 2008
Brooklyn, N.Y.

s/ Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge